

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOHN HERZFELD, an individual,
Plaintiff,

vs.

TEVA PHARMACEUTICALS USA,
INC. OMNIBUS WELFARE PLAN;
QUANTUM HEALTH, INC.,
WHICH WILL DO BUSINESS AS
COORDINATED HEALTHCARE;
MERITAIN HEALTH, INC.;
MCMC, LLC; and AETNA LIFE
INSURANCE COMPANY,
Defendants.

CASE NO. 2:18-cv-09784 ODW (SSx)
Judge: Otis D. Wright, II

QUALIFIED PROTECTIVE ORDER

*note changes
by the Court*

All future discovery filings shall
include the following language
on the cover page:
"[Referred to Magistrate Judge
Suzanne H. Segal]"

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Health Insurance Portability and Accountability Act of 1996, and for good cause, the Court issues this Qualified Protective Order. Unless modified pursuant to the terms contained in this Order, this Order shall remain in effect through the conclusion of this litigation.

IT IS ORDERED THAT:

1. Scope of Protection

This Protective Order shall govern any record of information produced in this action and designated pursuant to this Protective Order, including all designated deposition testimony, all designated testimony taken at a hearing or other proceeding, all designated deposition exhibits, interrogatory answers, admissions, documents and other discovery materials, whether produced informally or in response to interrogatories, requests for admissions, requests for production of documents or other formal methods of discovery.

This Protective Order shall also govern any designated record of information produced in this action pursuant to required disclosures under any federal procedural rule or local rule of the Court and any supplementary disclosures thereto.

This Protective Order shall apply to the parties and to any nonparty from whom discovery may be sought who desires the protection of this Protective Order.

2. Definitions

The term Confidential Information shall mean confidential or proprietary technical, scientific, financial, business, health, or medical information designated as "CONFIDENTIAL" by the producing party.

The term Confidential Health Information shall constitute a subset of Confidential Information, and shall be designated as "CONFIDENTIAL" and subject to all other terms and conditions governing the treatment of Confidential Information. Confidential Health Information shall mean information supplied in

1 any form, or any portion thereof, that identifies an individual or subscriber in any
2 manner and relates to the past, present, or future care, services, or supplies relating
3 to the physical or mental health or condition of such individual or subscriber, the
4 provision of health care to such individual or subscriber, or the past, present, or
5 future payment for the provision of health care to such individual or subscriber.
6 Confidential Health Information shall include, but is not limited to, claim data,
7 claim forms, grievances, appeals, or other documents or records that contain any
8 patient health information required to be kept confidential under any state or
9 federal law, including 45 C.F.R. Parts 160 and 164 promulgated pursuant to the
10 Health Insurance Portability and Accountability Act of 1996 (*see* 45 C.F.R.
11 §§ 164.501 & 160.103), and the following subscriber, patient, or member
12 identifiers:

- 13 a. names;
- 14 b. all geographic subdivisions smaller than a State, including street
15 address, city, county, precinct, and zip code;
- 16 c. all elements of dates (except year) for dates directly related to an
17 individual, including birth date, admission date, discharge date, age,
18 and date of death;
- 19 d. telephone numbers;
- 20 e. fax numbers;
- 21 f. electronic mail addresses;
- 22 g. social security numbers;
- 23 h. medical record numbers;
- 24 i. health plan beneficiary numbers;
- 25 j. account numbers;
- 26 k. certificate/license numbers;
- 27 l. vehicle identifiers and serial numbers, including license plate
28 numbers;

- 1 m. device identifiers and serial numbers;
- 2 n. web universal resource locators ("URLs");
- 3 o. internet protocol ("IP") address numbers;
- 4 p. biometric identifiers, including finger and voice prints;
- 5 q. full face photographic images and any comparable images; and/or
- 6 r. any other unique identifying number, characteristic, or code.

7 The term Technical Advisor shall refer to any person who is not a party to
8 this action or not presently employed by the receiving party or a company affiliated
9 through common ownership, who has been designated by the receiving party to
10 receive another party's Confidential Information, including Confidential Health
11 Information. Each party's Technical Advisors shall be limited to such person as, in
12 the judgment of that party's counsel, are reasonably necessary for development and
13 presentation of that party's case. These persons include outside experts or
14 consultants retained to provide technical or other expert services such as expert
15 testimony or otherwise assist in trial preparation.

16 **3. Designation of Information**

17 Documents and things produced or furnished during the course of this action
18 shall be designated as containing Confidential Information, including Confidential
19 Health Information, by placing on each page, each document (whether in paper or
20 electronic form), or each thing a legend substantially as follows:

21 **CONFIDENTIAL**

22 A party may designate information disclosed at a deposition as Confidential
23 Information by requesting the reporter to so designate the transcript at the time of
24 the deposition.

25 A producing party shall designate its discovery responses, responses to
26 requests for admission, briefs, memoranda and all other papers sent to the court or
27 to opposing counsel as containing Confidential Information when such papers are
28 served or sent.

1 A party shall designate information disclosed at a hearing or trial as
2 Confidential Information by requesting the court, at the time the information is
3 proffered or adduced, to receive the information only in the presence of those
4 persons designated to receive such information and court personnel, and to
5 designate the transcript appropriately.

6 The parties will use reasonable care to avoid designating any documents or
7 information as Confidential Information that is not entitled to such designation or
8 which is generally available to the public. The parties shall designate only that part
9 of a document or deposition that is Confidential Information, rather than the entire
10 document or deposition.

11 **4. Disclosure and Use of Confidential Information**

12 Information that has been designated Confidential shall be disclosed by the
13 receiving party only to Qualified Recipients. All Qualified Recipients shall hold
14 such information received from the disclosing party in confidence, shall use the
15 information only for purposes of this action and for no other action, and shall not
16 use it for any business or other commercial purpose, and shall not use it for filing
17 or prosecuting any patent application (of any type) or patent reissue or
18 reexamination request, and shall not disclose it to any person, except as hereinafter
19 provided. All information that has been designated Confidential shall be carefully
20 maintained so as to preclude access by persons who are not qualified to receive
21 such information under the terms of this Order.

22 In the event that any receiving party's briefs, memoranda, discovery
23 requests, requests for admission or other papers of any kind which are served or
24 filed shall include another party's Confidential Information, the papers shall be
25 appropriately designated and shall be treated accordingly.

26 All documents, including attorney notes and abstracts, which contain another
27 party's Confidential Information, shall be handled as if they were designated
28 pursuant to paragraph 3.

1 Documents, papers and transcripts filed with the court that contain any other
2 party's Confidential Information shall be filed under seal.

3 **5. Qualified Recipients**

4 For purposes of this Order, the term Qualified Recipient means

- 5 a. Outside counsel of record for any party in this action, as well as
6 employees of such counsel (excluding experts and investigators)
7 assigned to and necessary to assist such counsel in the preparation and
8 trial of this action;
- 9 b. Representatives, officers, or employees of a party as necessary to
10 assist outside counsel in the preparation and trial of this action;
- 11 c. Witnesses who testify by deposition or at trial who, if not a
12 representative, officer, or employee of a party, shall be advised about
13 the terms of this Order and that such Order is applicable to them in
14 connection with their testimony and do not retain copies of
15 Confidential Information;
- 16 d. Persons who were authors or recipients of the Confidential
17 Information or previously had legal access to Confidential
18 Information;
- 19 e. Technical Advisors, expert witnesses, or consultants engaged by a
20 party to assist with the preparation and trial of this action provided
21 such expert or consultant agrees in writing, in the form attached at
22 Appendix A, to be bound by the terms of this Order;
- 23 f. Any designated arbitrator or mediator who is assigned to hear this
24 matter, or who has been selected by the parties, and his or her staff,
25 provided that such individuals agree in writing, in the form attached at
26 Appendix A, to be bound by the terms of this Order;
- 27 g. Stenographers and videographers engaged to transcribe or record
28 depositions conducted in this action provided that such individuals

1 agree in writing, in the form attached at Appendix A, to be bound by
2 the terms of this Order; and

3 h. The Court and its support personnel.

4 **6. Nonparties**

5 Any nonparty who produces documents or other information in response to
6 discovery requests or subpoenas in this litigation shall be entitled to the benefits
7 and protections of this Order and shall be entitled to seek additional protections.

8 The parties agree that they will treat Confidential Information produced by
9 nonparties according to the terms of this Order.

10 Nonparties may challenge the confidentiality of Confidential Information by
11 filing a motion to intervene and a motion to de-designate.

12 **7. Inadvertent Failure to Designate**

13 In the event that a producing party inadvertently fails to designate any of its
14 information pursuant to paragraph 3, it may later designate by notifying the
15 receiving parties in writing. The receiving parties shall take reasonable steps to see
16 that the information is thereafter treated in accordance with the designation.

17 It shall be understood however, that no person or party shall incur any
18 liability hereunder with respect to disclosure that occurred prior to receipt of
19 written notice of a belated designation.

20 **8. Inadvertent Disclosure**

21 In the event of an inadvertent disclosure of another party's Confidential
22 Information to a non-Qualified Recipient, the party making the inadvertent
23 disclosure shall promptly upon learning of the disclosure: (i) notify the person to
24 whom the disclosure was made that it contains Confidential Information subject to
25 this Order; (ii) make all reasonable efforts to preclude dissemination or use of the
26 Confidential Information by the person to whom disclosure was inadvertently
27 made including, but not limited to, obtaining all copies of such materials from the
28 non-Qualified Recipient; and (iii) notify the producing party of the identity of the

1 person to whom the disclosure was made, the circumstances surrounding the
2 disclosure, and the steps taken to ensure against the dissemination or use of the
3 information.

4 **9. Challenge to Designation**

*Local Rule 37 governs all
disputes over discovery. SRS*

5 At any time after the delivery of Confidential Information, counsel for the
6 party receiving the Confidential Information may challenge the designation of all
7 or any portion thereof by providing written notice thereof to counsel for the party
8 disclosing or producing the Confidential Information. If the parties are unable to
9 agree as to whether the confidential designation of discovery material is
10 appropriate, the party receiving the Confidential Information shall certify to the
11 Court that the parties cannot reach an agreement as to the confidential nature of all
12 or a portion of the Confidential Information. Thereafter, the party disclosing or
13 producing the Confidential Information shall have ten days from the date of
14 certification to file a motion for protective order with regard to any Confidential
15 Information in dispute. The party producing the Confidential Information shall
16 have the burden of establishing that the disputed Confidential Information is
17 entitled to confidential treatment. If the party producing the Confidential
18 Information does not timely file a motion for protective order, the Confidential
19 Information in dispute shall no longer be subject to confidential treatment as
20 provided in this Order. All Confidential Information is entitled to confidential
21 treatment pursuant to the terms of this Order until and unless the parties formally
22 agree in writing to the contrary, a party fails to timely move for a protective order,
23 or a contrary determination is made by the Court as to whether all or a portion of
24 designated Confidential Information is entitled to confidential treatment.

25 **10. Conclusion of Action**

26 At the conclusion of this action, including through all appeals, each party or
27 other person subject to the terms hereof shall be under an obligation to destroy or
28 return to the producing party all materials and documents containing Confidential

1 Information and to certify to the producing party such destruction or return. Such
2 return or destruction shall not relieve said parties or persons from any of the
3 continuing obligations imposed upon them by this Order.

4 The provisions of this paragraph shall not be binding on the United States,
5 any insurance company, or any other party to the extent that such provisions
6 conflict with applicable Federal or State law. The Department of Justice, any
7 insurance company, or any other party shall notify the producing party in writing
8 of any such conflict it identifies in connection with a particular matter so that such
9 matter can be resolved either by the parties or by the Court.

10 **11. Jurisdiction to Enforce Protective Order**

11 After the termination of this action, the Court will continue to have
12 jurisdiction to enforce this Order.

13 **12. Modification of Protective Order**

14 This Order is without prejudice to the right of any person or entity to seek a
15 modification of this Order at any time either through stipulation or Order of the
16 Court.

17 **13. Confidentiality of Party's Own Documents**

18 Nothing herein shall affect the right of the designating party to disclose to its
19 officers, directors, employees, attorneys, consultants or experts, or to any other
20 person, its own information. Such disclosure shall not waive the protections of this
21 Protective Order and shall not entitle other parties or their attorneys to disclose
22 such information in violation of it, unless by such disclosure of the designating
23 party the information becomes public knowledge. Similarly, the Protective Order
24 shall not preclude a party from showing its own information, including its own
25 information that is filed under seal by a party, to its officers, directors, employees,
26 attorneys, consultants or experts, or to any other person.

27 **14. Compulsory Disclosure to Third Parties**

28 If any receiving party is subpoenaed in another action or proceeding or

1 served with a document or testimony demand or a court order, and such subpoena
2 or demand or court order seeks Confidential Information, including Confidential
3 Health Information of a producing party, the receiving party shall give prompt
4 written notice to counsel for the producing party and allow the producing party an
5 opportunity to oppose such subpoena or demand or court order prior to the
6 deadline for complying with the subpoena or demand or court order. No
7 compulsory disclosure to third parties of information or material exchanged under
8 this Order shall be deemed a waiver of any claim of confidentiality, except as
9 expressly found by a court or judicial authority of competent jurisdiction.

10 **15. Binding Effect**

11 This Order shall be binding upon the parties and their attorneys, successors,
12 executors, personal representatives, administrators, heirs, legal representatives,
13 assigns, subsidiaries, divisions, employees, agents, independent contractors, or
14 other persons or organizations over which they have control.

15 **IT IS SO ORDERED.**

16 DATED: *September 16, 2019*



~~Otis D. Wright, II~~
~~United States District Judge~~

Suzanne H. Segal
U.S. Magistrate Judge

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JOHN HERZFELD, an individual,
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TEVA PHARMACEUTICALS USA,
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CASE NO. 2:18-cv-09784 ODW (SSx)
Judge: Otis D. Wright, II

**APPENDIX A - PROTECTIVE
ORDER UNDERTAKING**

I, _____, declare that:

1. My address is _____. My
current employer is _____. My current
occupation is _____.

2. I have received a copy of the Qualified Protective Order in this action.
I have carefully read and understand the provisions of the Qualified Protective
Order.

3. I will comply with all of the provisions of the Qualified Protective
Order and agree to be bound by the Qualified Protective Order. I will hold in
confidence, will not disclose to anyone not qualified under the Qualified Protective
Order, and will use only for purposes of this action any Confidential Information
or information designated as "Confidential" that is disclosed to me.

4. Promptly upon termination of the relevant action, I will either return
in full to the outside counsel for the party by whom I am employed or completely

1 destroy all documents and things designated as "Confidential" that came into my
2 possession, and all documents and things that I have prepared relating thereto.

3 5. I understand that the obligations of this undertaking and the provisions
4 of the Qualified Protective Order continue past the termination of the action.

5 6. I hereby submit to the jurisdiction of this Court for the purpose of
6 enforcement of the Qualified Protective Order in this action.

7 I declare under penalty of perjury that the foregoing is true and correct.

8
9 Signature _____

10 Date _____